

REMARKS

Reconsideration of this application is respectfully requested.

The Examiner has objected to claims 14 and 16 as lacking proper antecedent basis and being dependent on the wrong parent claim, respectively. Claim 14 has been amended by adding a "bottom segment" and reciting it to be integral with the base. The dependency of claim 16 has been changed to that suggested by the Examiner. The Examiner's objections are believed to be overcome thereby.

Claims 1-2, 5-7, 9-10, 13, and 17-20 stand rejected under 35 U.S.C. §103(a) as obvious in view of Goddard and Fink. Applicant respectfully traverses.

The Examiner interprets Goddard as disclosing a "lane maker" comprising a plurality of cones, each cone having a base with a conical cap, a "lane marker" (24) rotatably connected (by support 19) to the base, an anchor (13) fixed to the base, and a light mounted behind the lane marker.

It is fundamental claim interpretation to look to the specification for the meaning of the terms of the claims. Applicant's specification identifies the "lane maker" as the plurality of cones connected by "lane markers."

"Referring now to the FIG. 1, a traffic control **lane maker 10** comprises a plurality of traffic cones 12 arranged and interconnected together so as to create a lane designating boundary for a new traffic pattern." (Page 11, lines 9-11, of the specification.)

A "lane marker" visibly demarcates the boundary between permitted and forbidden areas while simultaneously allows easy crossing thereof.

"That is, positive **lane markers** must be visually provided which show that crossing them is forbidden, while at the same time physically permitting authorized vehicles to cross them without have to stop to remove and replace the barriers." (Page 4, lines 14-47, of the specification.)

"It is a further object of the invention to provide a traffic cone which includes a rotatable, retractable **lane marker** which lies flat on the road to permit travel thereover without damage." (Page 8, line 19, through page 9, line 2, of the specification.)

The white lines commonly painted on highways are "lane markers." These were distinguished throughout the specification from unconnected cones which permit easy crossings but no clear lane demarcations and from cones connected by fences and barriers which mark the lanes clearly but do not permit crossing at all.

Both Goddard and Fink show highway markers in the form of a fence or

barrier. Neither reference discloses nor teaches a structural combination which meets the dual functions of the claimed invention:

"Thus, the instant invention combines two desirable features in one structure, namely, the lane boundary is clearly marked by a highly reflective tape, and official trucks, cars, or other vehicles can easily pass over it in the performance of their duties without disrupting the visual effect. (Page 22, line 16, through page 23, line 1.)

Neither Goddard nor Fink nor the prior art have recognized the desirability of the dual purposes, enumerated above. Nor did any of them provide a unitary concept for highway markers which would achieve the desired results. Both Goddard and Fink provide clear, unambiguous, and temporary lane markers which cordon off a restricted area to the general public, but their structures cannot simultaneously permit easy access to those prohibited areas without the necessity of dismantling their barriers. The common practice of discrete cones spaced apart along the roadway permits easy access to the restricted area, but it cannot positively delineate new lanes. Only applicant's cones with the disclosed lane markers accomplishes both within a single system.

It is respectfully urged that Goddard and Fink, taken alone or in

combination, do not teach nor render obvious the claimed structure.

Withdrawal of the rejections of claims 1-2, 5-7, 9-10, 13, and 17-20 is respectfully solicited.

Claims 3-4 and 11-12 stand rejected under 35 U.S.C. §103(a) as obvious in view of Goddard, Fink, and Hart, cited to show a lighted cone. Hart does not disclose any "lane marker," so it follows that Hart cannot remedy the deficiency of Goddard and Fink, as pointed out above.

Claims 14-16 stand rejected under 35 U.S.C. §103(a) as obvious in view of Goddard, Fink, and Barnard, cited for the showing of a collapsible cone. Inasmuch as Barnard likewise does not disclose any "lane marker," it follows that Barnard also cannot remedy the deficiency of Goddard and Fink.

Claim 8 stands rejected under 35 U.S.C. §103(a) as obvious in view of Goddard, Fink, and Wood, cited for "teaching" color coding traffic cones. Inasmuch as Wood does not connect the cones, the patent likewise does not remedy the deficiency of Goddard and Fink, as above,

Of passing interest, it is noted that contrary to the Examiner's assertions, the supports 19 of Goddard are not rotatable, so they cannot rotatably attach the fences to their cones. And, Wood fails to teach color-coding. Wood teaches making the cones of various highly visible colors, but

that is not a teaching that each color should be used in concert to indicate a particular activity associated with the lane maker.

Viewing the cited references as a whole, none recognized the problem addressed by the applicant, none provided easy access to prohibited areas without the necessity to dismantle the lane maker while simultaneously clearly designating lane markings, and none show a structure which can effect the desired end. It is well settled law that patentability can validly be predicated on either.

The problem confronted by the inventor must be considered in determining whether it would have been obvious to combine references in order to solve that problem. **Diversitech Corp. v. Century Steps, Inc., 7 USPQ2d 1315 (Fed. Cir. 1988), at 1318**

It should not be necessary for this court to point out that a patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified. This is part of the "subject matter as a whole" which should always be considered in determining the obviousness of an invention under 35 U.S.C. 103." * * * *If, as appellants claim, there is no evidence of record that a person of ordinary skill in the art at the time of appellants' invention would have expected the problem ... to exist at all, it is not proper to conclude that the invention which solves this problem * * * would have been obvious to that hypothetical person of ordinary skill in the art.* The significance of evidence that a problem was known in the prior art is, of course, that knowledge of a problem provides a reason or motivation for workers in the art to apply their skill to its solution. **In re Nomiya et al., 184 USPQ 607 (CCPA 1975), at 612-613**

When claims 1-20 are read in light of the specification, it is clear the references cited by the Examiner do not teach the invention nor make obvious the combination recited in the claims as originally filed. Nonetheless, if the Examiner, certainly one skilled in the art, has overlooked the fundamental nature of the invention, perhaps others will as well. In order to avoid any future confusion, which benefits no one, applicant has amended the claims to more clearly distinguish from the prior art, namely, the tape of the

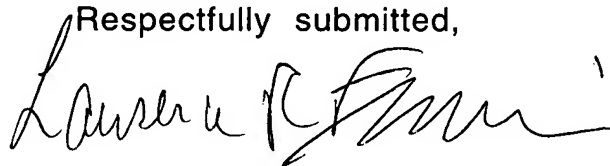
lane marker has been emphasized as being planar and oriented such that it will lie flat on the roadway between the cones. The desired results, which none of the cited references can effect, flow from this physical structure.

In view of the foregoing, it is respectfully submitted that claims 1-20 patentably distinguish over all the art of record, taken singly or in any combination, under 35 USC 102 as well as under 35 USC 103.

Allowance of the claims and the passing of the application to issue is respectfully solicited.

If the Examiner has any comments, questions, objections or recommendations, the Examiner is invited to telephone the undersigned at the telephone number given below for prompt action.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lawrence R. Franklin", written in a cursive style.

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